



## Department of Commerce to Switch to New Licensing Data Base

All of the divisions within the Department of Commerce (including Division of Real Estate) are being transferred into an entirely new licensing data base for issuing and tracking licenses. The transfer will have significant impact on all professions regulated by the Department of Commerce.

### RENEWAL FORMS

Utah real estate licensees will immediately notice a new look to the renewal form. All instructions for renewal will be on the face of the form. The form will contain a "coupon" which will be detached from the form and returned to the Division with all appropriate renewal information and fees. Each licensee will still be required to complete the Qualifying Questionnaire regarding criminal problems during the prior renewal period.

### NEW LICENSE LOOK

The license will also be entirely new. The paper will be of greater substance and the ink won't smudge (as with our current licenses). The pocket card is smaller, allowing it to be laminated and still fit into one's wallet. The licensee will still be responsible for submitting the new license to the principal broker and transferring the license to each new broker upon transferring companies. There will no longer be space on the back of the license for the principal broker to sign-on and sign-off a licensee. All record keeping for licensee transfers will be maintained (by both principal broker and sales agent) by use of copies of the Change Card(s).

### LICENSE NUMBERS (THIS IS IMPORTANT, FOLKS)

Each licensee, broker and sales agent, will be issued a

new license number. The new license number will be issued to the licensee at time of his/her renewal, even though the new number will have been automatically assigned at time of the data base transition. If (heaven

forbid) there ends up being confusion over the old license number and the new license number, the licensee's Social Security number will be used to identify the licensee until all confusion over license numbers has been erased.

"The transfer will have significant impact on all professions regulated by the Department of Commerce."

### PLEASE BE PATIENT

Any time a project of this magnitude is taken, problems are to be anticipated. The Department has good, highly skilled personnel who are responsible for this transition. But it will take a certain amount of time to work out the bugs. One potential problem is, we may have some "down time" as we work out the glitches. Whatever may happen, please be patient and work with us as we work to make everything ultimately better for YOU. Thanks.

B

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# Massive Confusion over Getting Continuing Education Credit for a Non-Certified Course

Since the last Utah Real Estate News that advised Utah licensees how to get CE credit for a course that hasn't been previously certified by the Division, the Division has had a myriad of courses submitted that have been denied certification because they did not meet the requirements established in the law.

## ***What Does the Rule Say?***

Administrative Rule 162-9.2.3. states: "Licensees may apply to the division for continuing education credit for a non-certified real estate course taken from a national provider that the licensee believes will improve his ability to better protect or serve the public."

R162-9.2.3.1 states: "A licensee may request approval of the course from the division and . . . the division will review the merits of the non-certified course and determine whether the course meets the criteria for Utah real estate continuing education."

## ***What Is a National Provider?***

The major confusion seems to be in what constitutes a "national provider." When the Real Estate Commission was discussing the merits of this rule change, their intention was to accommodate the licensee who travels out of state to attend a national seminar, conference, or convention that is being offered to licensees from all over the country. "National provider" would also mean an entity from outside of the state who is readily recognized as a provider of real estate education who comes *into* the state of Utah to provide a course.

These types of providers are professional educators of large enough magnitude that they have their *own* certification procedures in place against which their own instructors and their own courses are approved.

## ***Any Other Requirements?***

The course needs to meet Utah's requirements of providing (1) protection or (2) service to the public. Some submissions have been denied because the licensee couldn't define how the course would meet either one of those requirements.

## ***Why Have There Been Other Denials?***

If the licensee doesn't provide the three additional required elements of the submission, the Division is unable to complete the certification process. The three required elements are:

*a. Advertising material or other information from the Course Provider that describes the contents of the course.* Without specific information about the course, it is impossible to determine whether the course does, in fact, meet Utah's subject matter requirements. Some of the submissions coming in contain only the certificate, which gives only the title of the course. That doesn't give the Division enough information to make a creditable determination.

*b. Original certificate (copies or faxes will be rejected).* The original certificate is needed so the Division can be assured that the certificate has original signatures and that it hasn't been fabricated on a computer. (Yes, it's hard to believe, but some of our licensees are guilty of this kind of fabrication.)

*c. A self-addressed, stamped envelope.* This SASE is required so that the certificate can be returned along with the application form (which has been stamped as either "approved" or "denied"). The Division is currently providing this service at no cost to the licensee, but there are definite costs to the Division, including staff time





to process the applications. With the SASE included, the application can be processed almost the same day it is received. Without the SASE, the application will take longer to process.

### ***So How Do I Make Application for This Kind of Credit?***

After you have attended the course, call the Division and request the form for "Continuing Education Certification for a Non-certified Course."

Complete the form and send it (and the above required documentation) to the Division. If the submission is complete, you should hear back from the Division in about a week.

Please, do not call the Division asking if a certain course might receive credit. Without seeing all the required documentation, it is impossible to make a judgement call as to whether a course would qualify or not.

**DO NOT SEND THE APPLICATION IN WITH YOUR RENEWAL NOTICE.** On the chance that the CE application is denied, you will be missing the required CE hours and your license will expire! Far better that you know that bad news while you still have time to rectify the problem - and before your license expires.

And remember, you are still required to take the Core Course.

N

## **New Changes to the REPC**

In order to further refine and make the Real Estate Purchase Contract one of the best purchase contracts available, the Utah Real Estate Commission has made some minor, but significant, changes to the REPC form.

The first change appears in the "RECEIPT" section. Below the line where the agent or broker signs that the earnest money has been received, will now appear the words "Signature of agent/broker acknowledges receipt of Earnest Money." When the licensee who is responsible for obtaining the earnest money from the buyer signs his name on that line, he is making an affirmative statement that the earnest money is, indeed, in hand. In other words, as a licensee, do not affix your signature to the form until you are actually holding the earnest money!

The second change is in Section 1 where the property is further described with the addition of the "Zip" code.

The final change is found on page 6 where it indicates at the bottom of the page that the effective date of the new changes is September 30, 1999. All of

the vendors who print the REPC have been notified of the changes, and subsequent printed versions will carry the revisions. However, all licensees can use up their old copies of the REPC until July 1, 2000, at which time the old version must be discarded and only the new version used.

"Never argue with an idiot. They'll drag you down to their level, then beat you with experience."

--Unknown



### **Utah Real Estate News**

**Purpose:** To provide licensees with the information and education they need to be successful in competently serving the real estate consumer

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## What is a Digital Signature?

*Some states are beginning to authorize the use of digital signatures in certain applications. The following article is taken, in part, from an article written for the Nevada real estate newsletter, "Open House," Volume 23, Issue 2. Used with permission from the author.*

by Ben Scheible,  
Truckee Meadows  
Community College

A "digital signature" is not simply an electronic picture of your autograph or a digitized image of your handwritten signature. A digital signature allows an e-mail recipient to verify the sender's identity and ensures that the message has not been read or changed by anyone while in transit.

In some circumstances, a distinction is made between digitally "signing" a message and "encrypting" the message. Signing a message allows the recipient to verify the identity of the sender. Encrypting a message adds additional security, which prevents other people from reading or tampering with the message when it is in transit. The new Nevada law requires that digital signatures

must be created and verified by the use of asymmetric cryptography.

Cryptography is a branch of mathematics used to change messages into a seemingly unintelligible string of letters and numerals and then back again into text.

To create a digital signature, the signer creates two different, but mathematically related, "keys" called the "private key" and the "public key." Together, they are called the "key pair."

A private key is the part of a key pair that is used by a person to sign an electronic document. It must be kept secure, because it is the identity of the person in the electronic environment.

The public key is the part of the key pair used by the recipient of an electronic document to verify the signature. The use of private and public keys is similar in concept to a safety deposit box - both your personal key and the bank's key are required to open your safety deposit box.

The public key is maintained on a certificate issued by a certification authority. If many people need to

verify the signer's digital signature, the public key must be stored and distributed to all who need to use it. The place the keys are stored is called a repository.

Encryption software is used to create the keys. The private key, when used in connection with the message, creates a "hash" result, unique to the document. The mathematics of cryptography ensures that the same digital signature cannot be created by the combination of any other message and private key. A digital signature might look something like this:

—BEGIN SIGNATURE—

idkflkmejsdaio144lk1k1k08+kadlkdf  
lio993+1alkfdlasd4ks4jk4lksrjk41ksafj  
81kadfk1gytst0d6lardlfj+adfsdfddf+

—END SIGNATURE—

An important component in this process is an intermediary called a "certification authority." They establish the link between the signer and the key pair used to create the digital signature. A recipient may rely on the certification authority's identification of the sender instead of personally examining the sender's identification papers.

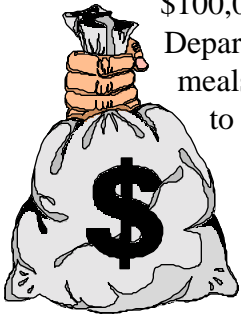
**FYI** - As of December, 1999, the Utah Division of Real Estate had a total of 14,477 real estate licensees. Of the active licensees there are 1877 principal brokers, 940 associate brokers, 113 branch brokers, and 7682 sales agents. Inactive licensees total 418 brokers and 3444 sales agents. Three sales agents' licenses are on suspended status.



## Title Firm Pays Fine of \$100,000

*From The Salt Lake Tribune, Wednesday, October 20, 1999*

First American Title Insurance Co. has paid a record \$100,000 fine to the Utah Insurance Department, which accused it of providing meals and gifts to entice real estate agents to steer business its way.



The fine assessed the Santa Ana, California-based company—one of the nation's largest providers of title insurance—as part of a crackdown on “unfair inducements” some title companies use to gain business referrals from Realtors. First American's Utah division will remain on probation until August 2000.

Title companies handle the closing of real estate transactions and search for any outstanding liens on property. They also arrange for title insurance, which protects buyers and lenders from problems uncovered by title searches. Home buyers may choose any title company but most simply use the company their Realtor recommends.

Meals, gifts worth hundreds of dollars and other freebies are an illegal, yet popular, way for title companies to gain referrals from Realtors, the Insurance Department said.

“Everybody is doing this to some degree. First American just happened . . . to get caught,” said attorney Peter Stevens, an Insurance Department investigator.

The practice is prohibited because it gives big title companies “an opportunity to buy market share and, once they have market share, to raise prices for consumers.”

First American spokeswoman, Jo Etta Bandy, downplayed the fine, saying it was the result of a “routine examination” of the company. The company,

which agreed to better train its employees about laws governing the title industry, had no further comment.

While the \$100,000 fine is huge by Utah's standards, it is considerably lower than the \$2.5 million fine the California Insurance Department this week ordered the company to pay.

California alleges First American provided illegal kickbacks to Realtors who referred business to them, including ski trips to Utah, trips to Las Vegas and tickets to concerts and sporting events.

Representatives of California's insurance department said in addition to the First American fine, it has levied \$500,000 in fines against other title companies in the past three years.

Utah also has fined several title companies in recent years, but its fines are considerably lower, usually about \$10,000 or less.

Utah's Insurance Department said in addition to the title companies, it is investigating several Realtors suspected of soliciting prizes and gifts from title companies. In fact, investigator Stevens said, many Realtors aggravate the problem by seeking handouts.

Realtor groups disagree with that characterization.

### TRUST ACCOUNT SEMINAR

The seminar will cover the Administrative Rules for trust accounts established under the Utah Real Estate license law.

**Location:** 2970 East 3300 South, Salt Lake City

**Dates:** February 4, March 3, April 7

**Time:** 9:00 am to 12:00 noon

**Credit:** 3 hours continuing education

You **MUST PREREGISTER** by sending \$5 with your name, address, phone number and license number to:

**Division of Real Estate**

**PO Box 146711**

**Salt Lake City, UT 84114-6711**

You will receive a phone call confirming your registration the week of the seminar.





## Utah Receives National Recognition for Real Estate Education Programs

At the most recent conference of the Association of Real Estate License Law Officials (ARELLO), the Utah Division of Real Estate was awarded the 1999 Education Excellence Award for Utah's "Total Education Program."

The parameters of the award upon which Utah was judged included (1) how licensees are kept current on law and industry changes, (2) against what standards prelicensing and continuing education courses and instructors are analyzed and issued (or denied) certification, (3) how the prelicensing curriculum is developed and assures training and knowledge in aspects of the profession, (4) how the prelicensing examination measures competency in skills and tasks to be performed as a real estate licensee, and (5) any innovative and/or creative aspects of the real estate education program.

The Division of Real Estate is proud to accept this award, but recognizes that the success of any education program ultimately lies with the instructors and the schools who provide the education. We salute all those who share their time, talents and devotion to providing education programs and courses to the Utah licensees. THANK YOU VERY MUCH!

### In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Kenneth E. Adams	Orem
Don E. Cofer	Provo
Ronald J. Goodwin	Sandy
Nancy Calvert Guest	Sandy
Carole A. Hansen	Bountiful
M. Earl Paxton	Bountiful
Robert J. Sidwell	Salt Lake City
Debra Wray	W. Bountiful

## The Art of Avoiding Misrepresentation

by Robert N. Bass, Esq.  
Attorney at Law, Phoenix Arizona

We all hear it constantly—the "M" word! Real estate agents seem to relish using the word "misrepresentation" and one can hear it almost anytime agents are talking among themselves. The word "misrepresentation" has become almost generic, and is used to describe almost anything the other agent did, that you didn't approve of.

However, it must be borne in mind that the term "misrepresentation" is a legal "term of art" and has a very specific definition. In fact, to make an allegation of misrepresentation stick in court, the Plaintiff must plead and prove no less than nine separate elements of the "offense." Not only that, but each of those nine elements must be proved by "clear and convincing evidence," a higher standard of proof than the "preponderance" test usually applied in civil court.

Traditionally, misrepresentation involved what may be referred to as the garden variety, outright lie. However, there are a number of other circumstances in which a misrepresentation can be made, which are not so blatant as the outright lie.

For example, a misrepresentation can be made negligently. That is, an agent can make a statement he/she believes is true, but the agent has not verified the information first, and happens to be wrong. Because there is a legal duty to provide reliable information to a client, the agent is guilty of negligent misrepresentation. To quote a recent Court decision, "When a broker speaks, he has a duty to provide reliable information."

Unfortunately, many agents seem to believe they must be omniscient—all knowing—in every transaction. They are terrified to utter those three little words, "I don't know." Thus, they allow their high-



est-liability item—their mouth—to get other parts of their anatomy in trouble! No matter what their I.Q., no matter how worldly-wise the agent may be, no agent can answer every question correctly, nor should he/she try. I am here to tell you that it is O.K. to say, “I don’t know.” You will never be sued for saying “I don’t know.”



I will now share with you the very essence of the Art of Avoiding Misrepresentation. Please take careful notes, as this principle was divined as a result of performing hundreds of “license-ectomies.” The best way to avoid making a misrepresentation is to make no representations at all!

Allow me to demonstrate this Principle in practice:

**Q:** Is this house on sewer, or on a septic system?

**A:** I believe it is on sewer, because the seller told me so. However, there is only one way to find out for sure and that is to have a “dye test” performed. I will be happy to help you arrange for a licensed plumber of your choice to perform such a test, at your expense.

**Q:** Under what circumstances could the lender call this loan immediately due and payable?

**A:** Well, I am not a loan officer, but I am sure that Suzi, the loan officer for the Lender, would be happy to explain this to you. I’ll make an appointment for you to talk to her.

With practice, you can learn to easily avoid answering almost any question! (Which qualifies you to run for public office!) If the party you are dealing with doesn’t take your advice to seek professional consultation, be sure to make a note of that fact in your file. For example, “3/27/99 - Buyer asked about 100% copper wiring; recommended that she hire electrician to verify; she doesn’t want to spend the money.” This type of “business record” in your file can go a long way toward insulating you from liability.

Another way to avoid the need to make representations is to recommend a thorough home inspection by a licensed, bonded and insured home inspection

service. Even if you have to pay for it yourself, consider it an insurance policy to cover your peace of mind. Don’t forget to recommend a home warranty! It is another form of inexpensive insurance to protect both you and your client.

And, hey! Let’s be careful out there!

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## Real Estate Disciplinary Sanctions



BEARD, JASON C., Sales Agent, West Jordan. Conditional license revoked on October 28, 1999 after the criminal background check required of new sales agents revealed that he failed to accurately disclose his criminal history on his application for a sales agent license. #REFP99-23.

BROWNE, ROGER J., Sales Agent, Lindon. License renewed on probationary status for two years, based on a plea in abeyance to a misdemeanor.

BRUNET, DAVID A., Sales Agent, Provo. License application granted on probationary status for two years.

CHRISTENSEN, DANIEL C., Sales Agent, Inactive, Taylorsville. Renewal denied on Sept. 15, 1999 based on recent misdemeanor Intoxication and Disorderly Conduct convictions, failure to report them to the Division when they occurred, and the fact that they were similar to a conviction he had before he became licensed.

COATS, PETER M., Principal Broker, Coats Realty, Riverton. Application for renewal as a broker denied based on a guilty plea to Class A misdemeanor Child Abuse. Mr. Coats will be issued a sales agent license which shall be on probationary status for two renewal periods. The sales agent license was to be suspended until Mr. Coats’ child abuse case was reduced to a Class B misdemeanor. If the case was not reduced to a Class B misdemeanor by September 1, 1999, the probationary sales agent license was to be revoked. Mr. Coats requested Agency Review, which has stayed the order denying his renewal pending the outcome of the Agency Review.

COOK, RALPH V., Sales Agent, West Jordan. License renewed on probationary status for two years based on a misdemeanor Retail Theft conviction.

*continued on page 8*



## Disciplinary Sanctions

*continued from page 7*

DOJAQUEZ, KIMBERLY, Sales Agent, Midway. Agreed to surrender her current license by November 27, 1999 and not to reapply for a new license for at least three years. Ms. Dojaquez had agreed to pay a \$500.00 fine in settlement of a disciplinary case, and then failed to pay the fine. #RE99-02-22.

DOTY, CHAD, Sales Agent, Orem. License renewed on probationary status due to failure to notify the Division within ten days of a misdemeanor conviction.

FARD, AFSHIN, Sales Agent, South Jordan. License application granted on probationary status for two years.

HARWARD, VALERIE P., Sales Agent, Wardley Better Homes & Gardens, American Fork Branch. Consented to pay a \$200.00 fine and complete an agency course, based on violating Administrative Rule R162-6.1.5.8 by placing her brokerage sign on a property without having permission from the owners to advertise the property. #RE98-05-03.

HAYCOCK, ROLAND, Principal Broker, previously broker for Commercial Real Estate Network, Bountiful. Surrendered his license effective September 25, 1999 and agreed not to apply for a new license for at least five years. Mr. Haycock surrendered his license in lieu of continuing to respond to the Division's investigation of a complaint alleging, among other things, that he acted as an absentee broker for \$500.00 per month. #RE99-07-02.

HENSCHIED, DONALD L., Broker, Alpine. Application for renewal as a broker denied based on a conviction of Class A misdemeanor Attempted False/Fraudulent Insurance Claim. Mr. Henschied will be issued a sales agent license which shall be on probationary status for the next renewal period.

HULLINGER, JEFFREY F., Sales Agent, Orem. Conditional license revoked on October 27, 1999 after the criminal background check required of new sales agents revealed that he failed to accurately disclose his criminal history on his application for a sales agent license. #REFP99-22.

JACKSON, MARK A., Principal Broker, Jackson Realty, Clearfield. Renewal as a broker denied, based on conviction of Attempted Burglary and Violation of a Protective Order in a domestic dispute. Mr. Jackson was issued a sales agent license instead of a broker license. The sales agent license was suspended for 90 days, and then placed on probationary status for the longer of his renewal cycle or his court-ordered probation. At the time of publication, it was not known whether Mr. Jackson would request Agency Review.

KARAPANOS, PETER C., Sales Agent, Salt Lake City. License application granted on probationary status for two years.

KEARNEY, JOHN G., Sales Agent, Wardley Better Homes & Gardens, Murray. License renewed on probationary status based on a plea in abeyance to Class B misdemeanor.

KUNZ, CANDICE L., Sales Agent, Wardley Better Homes & Gardens, Ogden Branch. Consented to pay a \$500.00 fine and complete a 4-hour course in contract law based on receipting a \$500.00 earnest money check which she had not actually received. #RE97-10-07.

MACKAY, GINA M., Sales Agent, The Tollstrup Group, Salt Lake City. Consented to a one-year probation and payment of a \$200.00 fine, based on failing to pay the fine and complete remedial education by the deadline ordered by the Commission in settlement of Case RE97-08-20. #RE99-09-26

MCLARNEY, PATRICK J., Sales Agent, Draper. Conditional real estate license revoked June 24, 1999 after the criminal background check required of new sales agents revealed that he failed to accurately disclose his criminal history on his application for a sales agent license. #REFP99-12.

MORRIS, DAVIE J., Sales Agent, Roosevelt. Conditional license revoked on October 27, 1999 after the criminal background check required of new sales agents revealed that he failed to accurately disclose his criminal history on his application for a sales agent license. #REFP99-20.

PAYNE, DAVID YOUNG, Sales Agent, Inactive, South Jordan. Consented to a suspension from Sept. 15, 1999 until he is released from probation in Second District Court Case 971700670, in which he was convicted of two counts of Class A Misdemeanor Attempted False/Inconsistent Material Statements. He also consented to pay a fine of \$500.00. #RE98-05-07.

PENNEY, JAKE D., Principal Broker, Proactive Commercial and Investment, Salt Lake City. Renewal denied on Sept. 15, 1999 based on a felony Attempted Theft by Deception Conviction involving check kiting. Mr. Penney requested Agency Review, which has stayed the order denying his renewal pending the outcome of the review.

PETERSEN, SCOTT C., Sales Agent, Realty Executives of Utah, Salt Lake City, and PETERSEN, CELESTINE R. "CELESTE", Sales Agent, currently Inactive. Each licensee consented to pay a \$1,000.00 fine and serve a one-year license probation, based on preparing a REPC which did not reflect the true terms of the transaction. The agreed sales price of the home was \$240,000, but the REPC was written to show a \$300,000 purchase price at the instruction of the buyer's mortgage broker. The transaction failed when the listing broker refused to proceed with the REPC. The Petersens maintain that there was no intent on their part to deceive since they filled out an addendum which showed the actual sales price, but they now realize the mortgage broker did not intend to



disclose to the ultimate purchaser of the loan that the purchase price had been inflated to make it appear that the buyer would make a down payment that he was not actually going to make, or that the buyer would actually obtain a loan to purchase the property without putting any money down. #RE97-10-20 and RE97-11-01.

PICKELNER, JOEL, Principal Broker, Interwest Realty Group, LLC, Salt Lake City. Renewal denied on Sept. 15, 1999 based on a civil judgment against him for fraud, misrepresentation, breach of fiduciary duty, and breach of contract in a real estate transaction, and on his actions with respect to assets which were not delivered to his trustee in bankruptcy. Mr. Pickelner requested Agency Review, which has stayed the order denying his renewal pending the outcome of the review.

PRICE, HOLLY, Sales Agent, West Jordan. Conditional license revoked on August 16, 1999 after the criminal background check required of new sales agents revealed pending Class B misdemeanor animal control charges. After a post-revocation hearing, the Commission and the Director concluded that Ms. Price had no intention to deceive on her application. Her license was reinstated effective Sept. 15, 1999. REFP99-13.

PULITZER MORTGAGE, PULITZER FINANCIAL SERVICES and DAN HOSTETTER, Salt Lake City. Cease and Desist Order issued November 9, 1999 prohibiting assisting sellers to find buyers for their homes. Following the issuance of the Cease and Desist Order, Respondents entered into a consent order with the Division in which they agreed to limit their assistance to sellers to providing complimentary yard signs and flyers on which the sellers are shown as the contact for further information about the homes. #RE99-10-22.

REAL ESTATE HQ, New Orleans, LA and RE/MAX REAL ESTATE PARTNERS and NANCY PETITTI, Mobile, AL. Cease and Desist Order issued November 30, 1999 prohibiting advertising Utah real estate for sale over the Internet and offering to refer prospective buyers who respond to the advertising to Utah real estate brokers. #RE99-11-20.

RETALLICK, CHARLES, Sales Agent, Eden. Consented to a suspension of license from October 15, 1999 until his criminal probation in Second District Court Case 981904255 is over, or for 36 months, whichever is longer, followed by a probationary period of three years. The suspension is based on three criminal convictions involving lewdness, and failure to report a conviction to the Division. #RE99-05-05.

SHELDON GOOD & COMPANY and STEVE FRENCH, Chicago, IL. Cease and Desist Order issued September 19, 1999 prohibiting listing, advertising, showing, auctioning, or otherwise offering Utah real estate for sale. Following the issuance of the Cease and Desist Order, Sheldon Good & Company requested a hearing on the issuance of the Cease and Desist Order. At the time of publication, the case was still pending. #RE 99-09-27.

SMITH, RICHARD L., Broker, Park City. Broker license application granted on probationary status.

STORHEIM, SUSAN, Sales Agent, Inactive, Salt Lake City. Consented to pay a \$400.00 fine and complete a course on the administrative rules, based on signing a listing on behalf of a brokerage before her license had actually been transferred there, and while a listing on the same property was still in effect with her previous brokerage. Ms. Storheim believed that the prior listing would be automatically released when she transferred brokerages. #RE 97-07-04.

STRATA FUNDING GROUP INC., Sandy. Cease and Desist Order issued September 29, 1999 prohibiting advertising real estate for sale or lease without a real estate broker's license. Following the issuance of the Cease and Desist Order, Strata Funding Group, Inc. entered into a Stipulation with the Division in which it agreed not to advertise properties for sale without a real estate broker's license. #RE 99-09-40.

TALCOTT, CYNTHIA C., Sales Agent, Salt Lake City. License application granted on probationary status for two years.

WEST, JASON R., Inactive Sales Agent, Roosevelt. License renewed on probationary status for two years based on a misdemeanor Disorderly Conduct conviction.

YARROW-BAKER, CYNTHIA A., Sales Agent, Centerville. License application granted on probationary status.



## remember

***You Must Notify the Division  
--in Writing--  
Within 10 Days of:***

•  
•

a change of personal address;  
a change of business address;  
a change of name;  
a change of personal or business  
telephone number  
a conviction of a criminal offense  
a filing of a personal or brokerage  
bankruptcy





## Appraiser Disciplinary Sanctions

BATH, J. ROBERT, State-Certified Residential Appraiser, Gilbert, Arizona. Renewal denied effective Sept. 16, 1999, based on failing to maintain adequate records, misrepresenting material facts, and egregious errors in his appraisals which suggest either competency problems or intentional mischaracterization.

BEXELL, STEVEN, Certified Residential Appraiser, Riverdale. Certification renewed on probationary status due to failure to make monthly restitution payments in Second District Court Case 921900237.

DALTON, ERIC, State-Certified Residential Appraiser, Draper. Surrendered his certification effective Sept. 19, 1999 in lieu of continuing to respond to fourteen complaints against him under investigation by the Division. Mr. Dalton may not reapply for a new appraiser license or certification for at least five years, own or manage an appraisal company for at least five years, or work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, as clerical support staff, or in any other capacity for at least five years. #AP95-10-30.

EASTON, RICHARD E., State-Registered Appraiser, Magna. Surrendered his registration effective Sept. 14, 1999 in lieu of continuing to respond to the Division's investigation. He may not reapply for a new appraiser license or certification for at least five years. #AP97-10-03.

LOOS, CARL, Registered Appraiser, Provo. In lieu of responding to the Division's investigation of three complaints against him, Loos surrendered his current registration and agreed not to apply for a new registration, license, or certification for at least five years. Loos neither admitted nor denied the allegations in the complaints that he failed to use better comparables which had significantly lower prices than the ones he chose, that he reported inaccurate square footage in an appraisal, and that he appraised a property substantially in excess of the price at which other units in the same complex were listed for sale. #AP97-11-17, AP98-10-24, and AP99-04-09.

PROWELL, KEVIN, Registered Appraiser, Sandy. Registration renewed on probationary status due to a D.U.I. conviction.

TIDWELL, LINCOLN, Registered Appraiser, American Fork. Agreed to surrender his appraisal registration to the Division by August 20, 1999 and not to reapply for a new license for at least one year. Mr. Tidwell violated USPAP Rules 1-1(a) to 1-1(c), 1-4(b), and 2-1(a) in a March, 1998 appraisal of a property located at 10607 W. South Cover Road, Lot 166 Saratoga Springs, No. 3 Planned Unit Development, Utah County. #AP98-04-07.



## Loan Fraud by Any Other Name

by Scott Taylor

*The following article is taken from the Oregon Real Estate News-Journal, September, 1999, but has been adapted to Utah law.*

**Utah Administrative Rule 162-6-1.1. False devices.** A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

**6.1.1.1. Loan Fraud.** A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed,

*may have material effect on the terms or the granting of the loan.*

**6.1.1.2. Double Contracts.** A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

Over the past several months as interest rates have edged up, housing starts have decreased, and the residential real estate market has softened somewhat, lenders have experienced a decrease in new and refinance loan applications.

Because of this, there has been increasing pressure exerted on mortgage brokers and bankers to pursue originating new loans more aggressively. As a result,



some lender representatives are suggesting a scheme to real estate licensees that could result in licensing sanctions.

The suggested scheme is when an agreement is written at an inflated sales price (higher than the actual selling price) with the objective of obtaining a larger loan than would normally be available at the true sales price. Another term for this practice is *loan fraud*.

The common situation where this practice might occur is with a purchaser who can afford a higher payment but who may be short on cash, and a property that may appraise for higher than the listed price. The lender may have a required list of “approved” appraisers who may be “generous” in their appraisals. The licensee writes the transaction with an increased sales price and the seller agrees to take back secondary financing. The listing broker might also be asked to increase the listing price prior to the submission of an offer. At closing, the note is usually not recorded and the seller “forgives” the obligation, tearing up the note. This usually occurs outside of escrow. No one makes a written disclosure to the ultimate lender (on the secondary market) that the note will be forgiven. The original lender might take a “don’t ask, don’t tell” attitude. This scenario seems to be reaching epidemic proportions.

So what is the problem? The seller gets the house sold. The buyer gets into a house. The

mortgage broker or banker collects a fee. The real estate licensees collect a fee. The lender likely sells the loan on the secondary market.

The first problem for a licensee is this scheme, if undisclosed in writing to the lender, is **illegal**. If the licensee is, or should be aware of the intent, the licensee shares in the guilt.

The second problem is there is a risk of unintended tax consequences for the buyer, or seller, or both.

It has been said that those who do not learn from history are doomed to repeat it. Someone has not learned from history here.

Because of the recent unprecedented period of prosperity, many appear to have forgotten the devastation in the thrift industry because of real estate loan defaults brought about by the recessions of the 1980’s. Much of the devastation occurred because of poor lending practices, including aggressive appraisals. That devastation brought about federal legislation known as the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). Most of the above loans will be uninsured loans with little, no, or potentially negative equity. These are the loans with the highest risk of foreclosure. Many mortgage backed securities are sold to pension funds, retirement plans and mutual funds—possibly yours.

I very clearly remember the negative impact on home prices that occurred as a

result of the recession in the early 80’s. Much of the downward pressure was caused by the huge influx of foreclosed properties that came onto the market over a short period of time. I, for one, am not anxious to lose equity in my home because of imprudent lending practices.

Realtor® Magazine Online carried a bit on July 26, 1999 that is very disturbing. They wrote:

*“Eased Lending Standards Feared as Home Starts Ebb*

*Housing industry economists are concerned that lenders, in response to a market slowdown, may be relaxing standards to make up for lost volume. If that’s happening, lenders could be the ultimate losers: if defaults and foreclosures increase, property values will drop, hurting lenders’ income statements.”*

Licensees should know better, but they fall into the trap of thinking the scheme is legitimate because a lender representative makes the suggestion. Any practice that withholds disclosure of something material to a party who has an interest in the transaction should be cause for immediate concern to a licensee. Something is being misrepresented, either actively or passively, to someone. Licensees should have learned this basic concept during their prelicensing education in real estate law and in their training sessions after licensing. *It should be known intuitively.* Don’t be the licensee who is investigated by the Division, or by the FBI, for violation of this very standard law: *loan fraud*.





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